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A writ of *habeas corpus* never could be used to punish a defendant for improperly seizing a citizen or for illegally deporting him from the state. The defendant may remain within its limits, but it is the presence of the wrong, not the wrongdoer, which gives the jurisdiction. *In re Jackson, supra*. This result would not weaken the safeguards of personal liberty. A writ of *habeas corpus* will always issue in the state where the actual restraint is being exercised. If the child is secreted, the common law remedy was by means of a writ *de homine replegiando*, a writ not obsolete in Massachusetts at least. It is true that in some states this writ is abolished, but such a lack of foresight does not justify an improper extension of the writ of *habeas corpus* to serve both purposes. Accordingly, while the result of the principal case is correct, it is to be regretted that the court did not take the opportunity presented firmly to establish the better view which formerly prevailed in New York. *In re Larson, supra*.

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SPECIFIC PERFORMANCE OF ALTERNATIVE CONTRACTS. — A late and somewhat curious decision of the Supreme Court of Mississippi grants specific performance of a contract, which the court apparently interprets as a true alternative contract, either to convey a certain lot of land or to pay a definite sum of money. *Phillips v. Cornelius*, 28 So. Rep. 871. It is said that as the defendant in the suit had refused to perform either alternative, the right of election passed to the plaintiff, who could insist on a conveyance of the land. The court invoke the rule that in contracts where a debtor is bound in an alternative obligation to do one of two things, he has the choice of doing one or the other until the time of payment, or until demand, where no time of performance has been agreed on; and upon the failure of the person thus having the option to elect in proper time, the right of election passes to the opposite party. *Corbin v. Fairbanks*, 56 Vt. 538. The citations given in support of this rule lend it a certain plausibility, but are in no way conclusive, and it is impossible on principle to assent to such a proposition. In alternative contracts it is a general rule that the damages in case of a breach are the value of the least beneficial alternative, whereas if the right of election passed to the plaintiff it would follow that he could choose the more valuable. 1 Sedgwick, *Damages*, § 421. There is but one line of cases that seems inconsistent with this view. In notes where the promisor has the option to pay in money, or in a certain number of specific articles, if he does not exercise that option before the day of payment, it is said that the promisee is entitled to the money. *Roberts v. Beatty*, 21 Am. Dec. 410, note, p. 422. The cases, however, may be explained on the ground that the amount of money mentioned in the note is in the nature of a stipulation for liquidated damages. In *Corbin v. Fairbanks, supra*, the court flatly say that the right of election in an alternative contract passes to the plaintiff on the defendant's default, but it is to be noted that the plaintiff in that case was seeking to recover money, and the court presumably regarded that alternative as a liquidation of the damages. A distinction must be drawn between a contract to convey land, or to pay a certain sum of money as liquidated damages, and a purely alternative contract. A purely alternative contract must not only be alternative in form, but it must appear that the parties intended that the promisor could satisfy his promise equally well by performing either branch. Where such an inten-

tion is apparent there seems no ground for allowing a specific performance of either alternative. Frye, *Specific Performance*, 3d ed. § 153.

In the principal case, however, the contract as set forth in the memorandum might be interpreted as an agreement to convey land, or, in case of failure, to pay a certain sum of money. The question is therefore raised as to whether or not equity will specifically enforce the performance of a contract in which liquidated damages are agreed upon. The fact that the stipulated sum can be recovered at law should not of itself be a bar to proceeding in equity. The promisor does not acquire the right to break his contract on tender of the money, or, in other words, such an agreement is not truly alternative. Under such circumstances, accordingly, specific performance has been allowed. *Crane v. Peer*, 43 N. J. Eq. 553; *National Provincial Bank v. Marshall*, 40 Ch. D. 112. It would seem, therefore, that the decision in the principal case may be supported, although the language of the court is wholly unjustifiable and misleading.

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CONTRACTS IN RESTRAINT OF MARRIAGE. — Restrictions on marriage are regarded as against public interest, and consequently agreements operating in general restraint of marriage are held to be illegal. In a recent Ohio case, the plaintiff had contracted to serve the defendant's testator as housekeeper as long as he should live, and not to marry during that time, and the question arose as to whether or not the whole contract was rendered illegal, so as to bar the plaintiff's recovery, although in fact she had not married, and had faithfully performed her services as housekeeper. *King v. King*, 59 N. E. Rep. 111. It may be stated as a broad rule that a consideration void in part will support a promise, while a consideration partially illegal or *contra bonos mores* will not. *King v. Sears*, 2 Crompt. M. & R. 48; Leake on Contracts, 3d ed. p. 677. In the principal case the court argue that, as it is lawful for one not to marry, it is lawful for one to promise not to marry, and consequently the consideration being merely void in part, the case comes under the doctrine of *King v. Sears, supra*. Similar reasoning might be applied to the analogous cases of contracts, in which a covenant in restraint of trade forms a part of the consideration. Courts hold, however, that such a covenant is not merely an insufficient or invalid consideration, but a vicious one, that renders the whole contract illegal. *Bishop v. Palmer*, 146 Mass. 469. Whether a promise for a money consideration not to marry or not to trade be called illegal, or simply void, is a matter of terminology. Such a promise is certainly contrary to the spirit of the law, and it is entirely a question of policy whether or not it should vitiate the transaction of which it forms a part.

Even admitting for the moment that the contract in the principal case was illegal, it might still be urged that the plaintiff was entitled to recover for her services as housekeeper. Leake on Contracts, 3d ed. p. 635; *Duval v. Wellman*, 124 N. Y. 156. In the above cited case a widow, who had advanced money under a marriage brokerage contract, admittedly illegal, was allowed to recover, the court holding that two parties may concur in an illegal act and yet not be *in pari delicto*. It would seem, however, inconsistent in the principal case to pronounce the transaction as a whole illegal, and yet allow the plaintiff to recover the very amount that she would obtain under the contract if deemed valid. Although, in